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No. 294.

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CHARLES ELMORE GROPLEY
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1945.

SOUTHEASTERN BUILDING CORPORATION,
Petitioner,

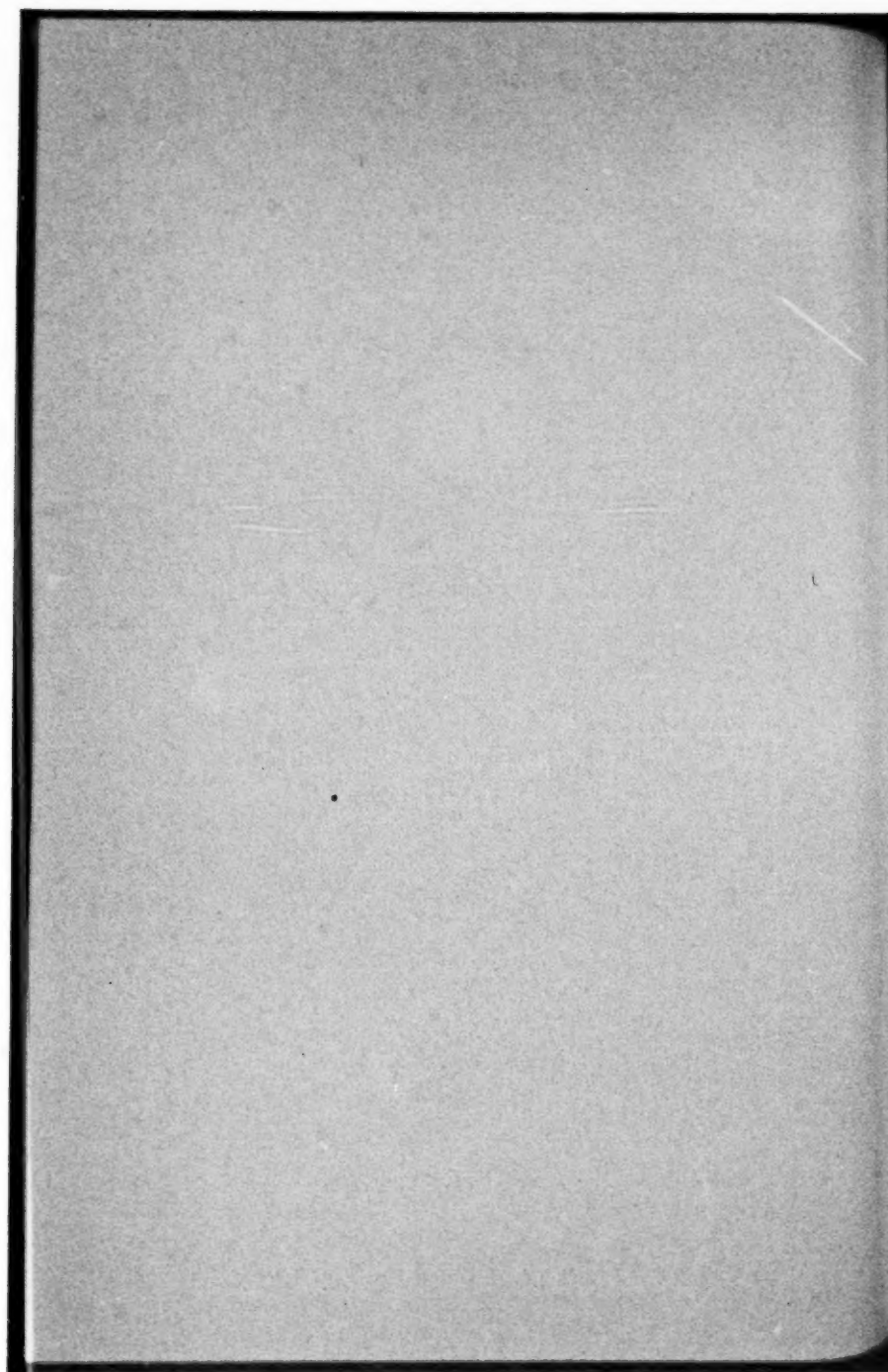
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

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I.

Petitioner in its brief in support of its Petition for Certiorari has heretofore fully discussed its position herein and believes that it has demonstrated the conflict between the decision below and the prior decisions of this Court in *Burnet v. Niagara Falls Brewing Co.*, 282 U. S. 548, 75 L. Ed. 594, and *U. S. Cartridge Co. v. U. S.*, 284 U. S. 551, 76 L. Ed. 431. It therefore does not feel called upon to further comment thereon. However, Respondent's brief in opposition contains certain palpably erroneous statements which Petitioner feels must be pointed out and challenged by this reply.

II.

Respondent twice misstates the established fact of abandonment of the "special purpose" use of the Petitioner's building. On page 10 of its brief Respondent says "there has been no abandonment . . . of its so-called special purpose." Again on page 11 it is stated "there has been no abandonment of the purpose for which it was built."

Such statements are absurd. The Tax Court specifically found to the contrary (R. pp. 36, 37). The Tax Court merely found that the building, **as such**, as distinguished from its "special purpose" use, had not been abandoned.

III.

On page 11 of its brief Respondent states, "The Petitioner's building was constructed as a warehouse." This statement patently ignores the record facts that the building was not built **merely** as a warehouse, but as one of four similar "special purpose" buildings in the United States constructed especially for the needs of and to the exact specifications of Western Union at a location demanded by them (R. pp. 36, 56, 61).

IV.

Respondent's arguments in opposition all flow from a basic premise founded upon the misstatements of fact referred to in II and III, *supra*. Any force which such argument might otherwise have completely dissolves when considered in light of the true facts.

V.

Respondent says (Res. Brief, p. 8) that "petitioner has failed to show that deductions for depreciation, previously allowed and to be allowed, would be insufficient to restore the cost of the warehouse." Here again there is a failure

to distinguish between the status of Petitioner's building as a "special purpose" Western Union building and as a **mere** warehouse. Such distinction must be recognized or the realities of the situation discarded. The building's "special purpose" use ended with the failure to renew the lease and the depreciation allowed up to that time was insufficient to restore the cost of the "special purpose" features of the building.

Upon loss of "special purpose" use obsolescence arose as to this building just as surely as it did in the cases of the brewery or the cartridge manufacturer in the decisions of this Court relied upon. The fact that the brewery and the cartridge plant might have been subsequently used for warehouses or for the manufacture of soft drinks did not prevent the allowance for obsolescence being immediately made in those cases. Parts of the brewery and the cartridge plant were undoubtedly built for warehouses, but they would be brewery or cartridge warehouses, not just ordinary warehouses, and when their value as brewery or cartridge warehouses disappeared obsolescence arose, even though the entire cost would have ultimately been recovered through the depreciation allowances that would continue to be made during their useful lives as **mere** buildings or warehouses.

In the case at bar the loss of the "special purpose" use of Petitioner's building was dramatically demonstrated by the drastic drop in rental value.

VI.

Respondent asserts (Res. Brief, p. 8) that "Petitioner . . . ignores the regulation [Reg. 103, Sec. 19.23 (1)-6].'' This is a strange contention in light of the fact that Petitioner set out the Regulation in the Appendix to its original brief (Pet., p. 17). However, a paraphrase of the Regulation will clearly show its application to the Petitioner's contentions herein. Such paraphrase would

read as follows: "The whole or the special portion in its which is clearly shown by the taxpayer as having prior affected by the failure to renew the lease will result, so special purpose use being abandoned at a future return to the end of its normal or special purpose use, so that depreciation deductions alone are insufficient to cover the cost or other basis at the end of its special term of usefulness."

VII.

The writ should issue.

Respectfully submitted,

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